

REPRESENTATIVES FOR PETITIONER: Gary Dausman, President of the New Paris Chamber of Commerce.

REPRESENTATIVES FOR RESPONDENT: Wilmer L. McLaughlin, Attorney for Elkhart County Property Tax Assessment Board of Appeals; Cathy Searcy, Secretary, Elkhart County Property Tax Assessment Board of Appeals.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

NEW PARIS CHAMBER OF)	Petition No.: 20-018-02-2-8-00001
COMMERCE,)	
)	County: Elkhart
Petitioner)	
)	Township: Jackson
v.)	
)	Parcel No.: 15-09-100-010-018
ELKHART COUNTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	
APPEALS,)	
)	Assessment Year: 2002
Respondent)	
)	

Appeal from the Final Determination of
Elkhart County Property Tax Assessment Board of Appeals

July 16, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board was:

Whether the property owned by the New Paris Chamber of Commerce, which is occupied and used by Boy Scout Troop #12, qualifies for exemption.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-3 Gary R. Dausman, President of the New Paris Chamber of Commerce (New Paris) filed a Form 136 application for property tax exemption with the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) on April 8, 2002. The County PTABOA denied the application on July 3, 2002 and gave New Paris proper notice of denial.
3. Pursuant to Ind. Code § 6-1.1-11-7, New Paris filed a Form 132 petition seeking a review of the PTABOA action by the Board. The Form 132 was filed on August 1, 2002.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on April 22, 2003 at the Goshen Government Center before Patti Kindler, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
5. The following persons were present at the hearing:

For the Petitioner: Gary R. Dausman, President of New Paris Chamber of Commerce.

For the Respondent: Wilmer L. McLaughlin, Attorney for the Elkhart County PTABOA; and
Cathy Searcy, Secretary for the Elkhart County PTABOA.

6. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner: Gary R. Dausman

For the Respondent: Wilmer L. McLaughlin
Cathy Searcy

7. The following exhibits were presented:

For the Petitioner: Petitioner's Exhibit 1 – Letter signed by Gary Dausman, President of New Paris, stating his contentions in support of exemption for the property.

Petitioner's Exhibit 2 – Letter signed by Richard Johnson, Chairman of the Oversight Committee for Boy Scout Troop #12, in support of exemption for the property.

Petitioner's Exhibit 3 – Letter signed by Richard Dausman, resident of New Paris, requesting exempt status for the Scout property.

For the Respondent: Respondent's Exhibit 1 – Copies of subject Form 136, Application for Exemption, and Form 120, Notice of Action on Exemption Application.

Respondent's Exhibit 2 – Copy of Ind. Code § 6-1.1-10-16(a), and an explanation of why the PTABOA denied the exemption.

8. The Administrative Law Judge requested a copy of New Paris's non-profit 501(c)(3) documentation as additional evidence. *See* Board Exhibit C. The Petitioner was given seven days to supply the evidence. The Petitioner did not submit the requested evidence

within the seven-day deadline allotted by the Board. Therefore, only the evidence submitted at the Board hearing will be taken into consideration as part of the subject appeal.

9. The following additional items are officially recognized as part of the record of proceedings:

Board's Exhibit A - Form 132 with the following attachments:

Notice of Disapproval of Exemption, Form 120, and

Form 136, Application for Property Tax Exemption

Board's Exhibit B - Notice of Hearing on Petition

Board's Exhibit C - Request for Additional Evidence

Board's Exhibit D - Post-Hearing Submission Waiver

10. The Administrative Law Judge did not view the subject property, which is located on 1.312 acres in Jackson Township, Elkhart County.

Jurisdictional Framework

11. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

State Review and Petitioner's Burden

12. The State does not undertake to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
13. The petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230

(Ind. Tax 1998). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]

14. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm’rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
15. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. ‘Conclusory statements’ are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm’rs*, 714 N.E. 2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
16. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case.’ See *Clark v. State Bd. of Tax Comm’rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm’rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

Constitutional and Statutory Basis for Exemption

17. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.

18. Article 10, Section 1, of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, exemption was claimed under Ind. Code § 6-1.1-10-16, which provides that all or part of a building is exempt from property taxes if it is owned, occupied, and used for educational, literary, scientific, religious or charitable purposes.
19. For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

20. In Indiana, the general rule is that all property is subject to property taxation. Ind. Code § 6-1.1-2-1.
21. The courts of some states construe constitutional and statutory tax exemptions liberally, some strictly. Indiana courts have been committed to a strict construction from an early date. *Orr v. Baker* (1853) 4 Ind. 86; *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 669 N.E. 2d 199 (Ind. Tax 1996).
22. All property receives protection, security and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support - - taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Association of Miniature Enthusiasts (NAME) v. State Board of Tax Commissioners*, 671 N.E. 2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.
23. This is why worthwhile activities or noble purpose is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public

purpose. *NAME*, 671 N.E. 2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).

24. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statute under which the exemption is being claimed. *Monarch Steel*, 611 N.E. 2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).
25. On the subject Form 132, New Paris claimed exemption for charitable purposes pursuant to Ind. Code § 6-1.1-10-16.
26. As a condition precedent to being granted an exemption under Ind. Code § 6-1.1-10-16 for charitable purposes, the taxpayer must demonstrate for the record that the subject property is: (1) owned; (2) occupied; and, (3) used for charitable purposes.
27. Indiana courts broadly construe the term “charitable” as the relief of human want and suffering in a manner different from the everyday purposes and activities of man in general. *NAME* 671, N.E. 2d at 221 (quoting *Indianapolis Elks Bldg. Corp. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 540, 251 N.E. 2d 673, 683 (Ind. App. 1969)).
28. “Charity” is not defined by statute, and the Tax Court looked to *Black’s Law Dictionary* to find the plain, ordinary, and usual meaning of “charity”:

a gift for, or institution engaged in, public benevolent purposes. [It is a]n attempt in good faith, spiritually, physically, intellectually, socially, and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular without regard to their ability to supply that need from other sources and without hope or expectation, if not with positive abnegation, of gain or profit by donor or by instrumentality of charity.

Raintree Friends, 667 N.E. 2d at 813-14 (quoting *Black’s Law Dictionary*, 213 (5th ed. 1979)).

29. Plainly, “charity” is not confined to relief for the destitute. It may be limited to one sex, church, city, or confraternity. *City of Indianapolis v. The Grand Master, etc. of the Grand Lodge of Indiana*, 25 Ind. 518, 522-23 (1865).
30. It is equally clear that “charity” must confer benefit upon the public at large or relieve the government of some of an obligation that it would otherwise be required to fill. *NAME*, 671 N.E. 2d at 221; *Foursquare Tabernacle*, 550 N.E. 2d at 854; *St. Mary’s Medical Center*, 534 N.E. 2d at 279

Discussion of Issue

Whether the property owned by New Paris Chamber of Commerce, which is occupied and used by Boy Scout Troop #12, qualifies for exemption.

31. The Petitioner claims the property qualifies for exemption pursuant to Ind. Code § 6-1.1-10-16 for charitable purposes. The Petitioner contends Boy Scout Troop #12 has exclusively used the subject property owned by New Paris since the 1960s and has had benefit of a 100% exemption for those years. The PTABOA denied exemption for the 2002 assessment year.
32. The Respondents contend that while they agree that the property is occupied and used for charitable purposes, it is not eligible for exemption because the owner, New Paris, is not an exempt organization.
33. The applicable rules governing the Issue are:

Ind. Code § 6-1.1-10-16(a)

All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.

Ind. Code § 6-1.1-10-16(c)

A tract of land, including the campus or athletic grounds of an educational institution, is exempt from property taxation if a building which is exempt under subsection (a) or (b) is

situated on it and the tract does not exceed fifty (50) acres in the case of an educational institution or a tract that was exempt on March 1, 1987 or fifteen (15) acres in all other cases.

Ind. Code § 6-1.1-10-25 Miscellaneous Organizations

(a): Subject to limitations contained in subsection (b) of this section, tangible property is exempt from taxation if it is owned by any of the following organizations:

(11): The Boy Scouts of America, one (1) or more of its incorporated local councils or a bank or trust company in trust for the benefit of one (1) or more of its local councils

(b): This exemption does not apply unless the property is exclusively used, and in case of real property actually occupied, for the purpose and objectives of the organization.

Raintree Friends v. State Board of Tax Commissioners, 667 N.E. 2d at 813-14 (Ind. Tax 1996)

Charity is defined in part as “an attempt in good faith to advance and benefit mankind in general... without regard to their ability to supply that need from other sources and without hope or expectation.... of gain or profit.”

37. Evidence and testimony considered particularly relevant to this determination include the following:

- (a) New Paris Boy Scout Troop #12 has used the subject cabin exclusively since 1944, when the New Paris Chamber of Commerce initiated a charter of sponsorship for the troop. *Dausman Testimony; Petitioner’s Exhibit 3.*
- (b) The New Paris Chamber has chartered their local Boy Scout Troop longer than any scout charter group in the state. *Dausman Testimony.*
- (c) Prior to the 1960’s, a private individual who owned the subject property allowed Boy Scout Troop #12 full use of the property. *Dausman Testimony.*
- (d) In the 1960’s, when the property was listed for sale on the market, a group of local New Paris businessmen and friends of scouting raised the funds to purchase the subject property on behalf of Boy Scout Troop #12. *Dausman Testimony; Petitioner’s Exhibit 3.*
- (e) New Paris, a non-profit organization, desired for the Scout Cabin to be under local control in lieu of outside control by the district Boy Scout council, who could vacate or sell the property at any time. *Dausman Testimony.*

- (f) New Paris purchased the property with the mission to insure Boy Scout Troop #12 would always have a local facility available to use and to promote local scouting. *Petitioner's Exhibit 2*. New Paris had no intention of using, occupying, or profiting from the subject property. *Dausman Testimony; Petitioner's Exhibit 1*.
- (g) The Scouts have exclusively used and occupied the property since the 1940's. *Dausman Testimony; Petitioner's Exhibits 1, 2, & 3*.
- (h) The Scouts raise funds for the necessary upkeep and repairs to the cabin. However, New Paris helps maintain the property and pays the electric bill for the cabin as a donation to the Scouts. *Dausman Testimony*.
- (i) New Paris does not charge any rent or fees for the use of the property by Boy Scout Troop #12. *Dausman Testimony; Board Exhibit A, Form 132*.
- (j) Mr. Dausman asserts that New Paris is a not-for-profit organization and believes they are tax exempt for federal tax purposes. *Dausman Testimony*.
- (k) New Paris has had the benefit of a local property tax exemption until 2002, when the PTABOA denied the exemption. *Dausman Testimony; Petitioner's Exhibit 2*.
- (l) The local officials do not quarrel that the property is being used for benevolent and charitable purposes. However, based on the requirements listed in Ind. Code § 6-1.1-10-16, the local officials denied the exemption because New Paris, the property owner, was not an exempt organization. *McLaughlin Testimony; Respondent's Exhibit 1*.
- (m) Further, the local officials did not allow exemption under Ind. Code § 6-1.1-10-25(a)(b)(11) for miscellaneous organizations, because the statute requires that the Boy Scouts of America or its local council or trust own the property.¹ *Searcy Testimony*.

¹ Ms. Searcy stated that New Paris did not mark the box for a charitable exemption on the Form 136, but marked "other". Therefore, the PTABOA reviewed New Paris's claim under Ind. Code § 6-1.1-10-25(a)(b)(11) for Miscellaneous Organizations, as well as, Ind. Code § 6-1.1-10-16 for charitable purposes. *Searcy Testimony; See, Respondent's Exhibit 1*. On the subject Form 132, New Paris requested exemption under Ind. Code § 6-1.1-10-16 for charitable purposes.

Analysis of Exemption Issue

34. The Petitioner has owned the property at appeal for over forty years, and has had the benefit of property tax exemption for all those years until the 2002 denial by the local officials. The Petitioner asserts New Paris raised funds to purchase the property so they could have local control over the property to insure future and continued use of it for the sole benefit of the local Boy Scouts.
35. The Respondents agree that the property is used and occupied for charitable purposes, but denied the exemption in accordance with their interpretation of the statutes. They allege the property's ownership does not comply with the requirements of Ind. Code § 6-1.1-10-16 or Ind. Code § 6-1.1-10-25(a)(b)(11), and is therefore, taxable.
36. New Paris requested a charitable exemption pursuant to Ind. Code § 6-1.1-10-16 on the Form 132 Petition to the Board. Generally, when a charitable exemption is requested the State will perform a complete analysis to determine whether the requirements of the statutes have been met. Said analysis is required to determine whether the property is owned, occupied and used for a charitable purpose. The Board will not review exemption pursuant to Miscellaneous Organizations, Ind. Code § 6-1.1-10-25(a)(b)(11), since it was not claimed on the Form 132, nor is it applicable to the subject property, which is not owned by the Boy Scout Council or Trust, therein.
37. Again, the parties do not dispute that the property is used and occupied for charitable purposes by New Paris Boy Scout Troop #12. Thus, the sole issue that remains to be resolved is whether the subject property is owned for a charitable purpose pursuant to Ind. Code § 6-1.1-10-16.
38. While the Boy Scouts of America are a non-profit organization, the question of whether New Paris, the actual property owner, is considered a non-profit tax-exempt entity remains unanswered. Mr. Dausman contended that he thought New Paris had federal tax-exempt status. The Administrative Law Judge requested evidence from the Petitioner

showing New Paris's Federal tax-exempt status. The requested evidence was not received in the time allowed.

39. However, New Paris's failure to submit evidence of federal tax-exemption is not a condition requisite to the final outcome of this appeal. Certainly, New Paris's case would have been further supported by the requested documentation. However, the case of *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E. 2d 954 (Ind. Tax 1997) provides guidance in deciding this appeal.
40. In *Sangralea Boys Fund*, Sangralea owned property but leased it to other entities for operation in a manner consistent with Sangralea's charitable purposes. The State Board denied Sangralea a charitable exemption due to this conflict between ownership and use. The Indiana Tax Court reversed the Board's decision and held that such unity of ownership, occupancy and use is *not* required. *Id* at 955.
41. The Indiana Tax Court determined that denying a property owner a tax exemption for allowing organized charities the use of the property discourages the commitment of such property for charitable uses. *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E. 2d 954. Further, the Tax Court held that "a piece of property must be owned for charitable purposes; a piece of property must be occupied for charitable purposes; a piece of property must be used for charitable purposes...and once these three elements have been met, regardless of by whom, the property can be exempt from taxation." *Id*.
42. In the case at bar, the record is clear that the property in question, owned by the New Paris Chamber of Commerce, is *occupied* strictly for charitable purposes and is *used* exclusively for charitable purposes as the Boy Scout meeting facility.
43. Therefore, to determine whether New Paris qualifies for exemption, the Board must determine whether profit, or the mission to use the subject property for charitable purposes, is New Paris's primary motivation for ownership. That question is easily

answered by examining the record, as well as, the extensive history between New Paris and Boy Scout Troop #12. The record shows that New Paris has supported Troop #12 since the 1940's. In addition, New Paris purchased the subject property with the intention of insuring that the property would always be available for local Boy Scout activities and meetings.

44. The PTABOA determined that the property's ownership by New Paris, rather than the Boy Scout Counsel or another exempt organization, deemed the parcel subject to property taxation. See Respondent's Exhibits 1 & 2.
45. The Indiana Tax Court has stated that the requirement of a property to be owned, occupied, and used for an exempt purpose does *not* mean that the property must be owned, occupied, and used by the same person or entity. *Sangralea Boys Fund v. State Board of Tax Commissioners*, 686 N.E. 2d 954 (Ind. Tax 1997). The record clearly shows that New Paris purchased the property to further an exempt (charitable) purpose.
46. To repeat, New Paris's primary purpose of ownership of the subject property was its charitable mission. The record indicates that New Paris receives no profit or financial gain from the ownership of the subject property; nor does New Paris use or occupy the property for its own benefit. The local Boy Scouts exclusively use and occupy the property to promote their charitable cause. New Paris's charitable mission, which began in 1944, was clearly accomplished and is still applicable in the 2002 tax year.
47. The Board finds that the requirements of Ind. Code § 6-1.1-10-16 were met as the property is owned, occupied and used for charitable purposes. Accordingly, the subject property is exempt from property taxation for the 2002 tax year.

Summary of Final Determination

Whether the property owned by New Paris Chamber of Commerce, which is occupied and used by Boy Scout Troop #12, qualifies for exemption.

48. The subject property titled to New Paris is owned exclusively to further an exempt purpose within the statutory requirements of Ind. Code § 6-1.1-10-16 and current case law. Therefore, New Paris is entitled to a property tax exemption on the property. The action of the Elkhart County PTABOA is overturned, and the land and improvements are determined to be 100% exempt.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.